

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA

V.

ANDREW J. HOWARD

§
§
§
§
§

A-06-CR-045 LY

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

TO: THE HONORABLE LEE YEAKE
UNITED STATES DISTRICT JUDGE

The Magistrate Court submits this Report and Recommendation to the District Court pursuant to 28 U.S.C. § 636(b)(3). The District Court referred this case to the United States Magistrate Judge for the taking of the defendant's felony guilty plea and for his allocution pursuant to Federal Rule of Criminal Procedure 11.

On June 1, 2006, the defendant and counsel appeared before the Magistrate Court. The undersigned addressed the defendant personally in open court, informed him of the admonishments under Rule 11 of the Federal Rules of Criminal Procedure, and determined that he understood those admonishments.

Pursuant to a plea agreement, the defendant plead guilty to possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. §§ 924(c)(1)(A) & 924(c)(1)(A)(i) (Count One).

The Magistrate Judge finds the following:

1. The defendant, with the advice of his attorney, consented to enter this guilty plea before the Magistrate Judge, subject to final approval and sentencing by the District Judge;
2. The defendant fully understands the nature of the charge against him and possible penalties;

3. The defendant understands his constitutional and statutory rights, understands that his constitutional and statutory rights can be waived, and understands the meaning and effect of the waiver of his constitutional and statutory rights;
4. The defendant waived his right to appeal and waived his right under 28 U.S.C. § 2255. The defendant did not waive the right to challenge his sentence to the extent that it is the result of ineffective assistance of counsel or prosecutorial misconduct of a constitutional dimension;
5. The defendant agreed to forfeit all right, title and interest in the following items: (1) \$9,147.00 in U.S. currency recovered from 1511 Desert Quail Lane, Austin, TX pursuant to Austin Police Search Warrant S-11934 on July 29, 2005; (2) Mossberg Model 500A, 12 gauge shotgun with a pistol grip, SN P889048; (3) Norinco Model SKS, 7.62 x 39 mm pistol grip rifle with folding stock, SN 7098733; (4) Mossberg Model 500ATP, 12 gauge shotgun, SN P889048; (5) Sites Model Spectre HC, 9mm caliber pistol, SN KB2867; and (6) Bryco Model Jennings T380-CA, .380 caliber pistol, SN 1473095;
6. The defendant's plea was made freely and voluntarily;
7. The defendant is competent to enter this plea of guilty; and
8. There is a factual basis for this plea.

RECOMMENDATION

The Magistrate Court **RECOMMENDS** the District Court accept the defendant's guilty plea and, after reviewing the presentence investigation report, enter a Final Judgment of guilt against him.

WARNING

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are

being made. The District Court need not consider frivolous, conclusive, or general objections. See *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained within this Report within ten (10) days after being served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations and, except upon grounds of plain error, shall bar the party from appellate review of proposed factual findings and legal conclusions accepted by the District Court to which no objections were filed. See 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S. Ct. 466, 472-74 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

The Clerk is directed to mail a copy of this Report and Recommendation to the parties by certified mail, return receipt requested.

SIGNED this 2nd day of June, 2006.

A handwritten signature in black ink, appearing to read "Robert Pitman", written over a horizontal line.

ROBERT PITMAN
UNITED STATES MAGISTRATE JUDGE